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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 501

MAURICE ROSENBLATT, *Appellant*

v.

AMERICAN CYANAMID COMPANY, *Appellee*

MOTION FOR REHEARING

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Appellant respectfully prays that this Court grant a rehearing of its order of November 15, 1965, dismissing the appeal, and that this Court note the existence of a substantial federal question and entertain oral argument thereon.

REASONS FOR GRANTING THE REHEARING

1. After the filing of the Appellant's Jurisdictional Statement, the parties entered into negotiations with a view to settling this case. The Appellee requested an extension of the time for filing a motion to dismiss.

This request was expressly based upon the negotiations then in progress. An extension until October 27, 1965, was granted by Mr. Justice Harlan on September 16, 1965.

2. Before the expiration of said extension, the Appellee requested a further extension for the same reason. The Appellant joined in this request and the parties assumed that the request would be treated the same as the previous one.

3. It is Appellant's understanding and belief that this second request also went to Mr. Justice Harlan. Before it had been acted upon, this case was erroneously put on the calendar for consideration by the Court. Mr. Justice Harlan was not participating in the decision on this case, and presumably the existence of a pending application for an extension of time was not brought to the attention of the Court. We assume, therefore, that the Court treated the case as if time for filing a motion to affirm or dismiss had elapsed and no such motion had been filed, whereas actually a timely motion for an extension was then pending.

4. The Order of this Court was entered before the Appellee had filed any motion on the merits, and while the parties were still negotiating with a view towards settlement.

5. The conduct of both parties in requesting postponement of the Court's action shows their awareness of the complexity of the issues involved. The premature action of this Court caused the appeal to be dismissed on incomplete papers, and would not have occurred had this Court been aware of the application of the Appellee for an extension.

6. Negotiations are still in progress and the interests of justice require that this Appeal be considered in proper time and on a proper set of papers.

7. If the Order dismissing the Appeal is allowed to stand, the parties may be forced to engage in a complicated trial, involving persons and actions on two continents, without any indication of the scope of jurisdiction which the New York court may assert consistently with due process. This issue is set forth in Question IV in Appellant's Jurisdictional Statement (pp. 20-24), and arguments addressed to this point, either in a motion to dismiss or orally, would further demonstrate the substantial nature of the issue.

CONCLUSION

For the reasons set forth above and in the Jurisdictional Statement, it is respectfully urged that the Order of the Court dated November 15, 1965, be withdrawn, that the consideration of jurisdiction over the appeal be postponed until the Appellee has had an opportunity to file a motion, and that the Court then enter an order noting probable jurisdiction.

Respectfully submitted,

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December 9, 1965

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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